

## REMARKS

The present application has been reviewed in light of the Office Action dated July 16, 2008. Claims 34-42 are presented for examination, of which Claims 34, 37, and 40 are in independent form. Claims 1, 3-10, 12-19, and 21-33 have been cancelled hereby, without prejudice or disclaimer of the subject matter recited therein. Claims 34-42 have been added to provide Applicant with a more complete scope of protection. Favorable consideration is respectfully requested.

The Office Action states that the title of the invention is not descriptive. The title has been amended to read as follows: “COMMUNICATION APPARATUS, CONTROL METHOD, AND COMPUTER-USABLE MEDIUM FOR SELECTING A NETWORK FOR DATA TRANSMISSION.” Applicant respectfully submits that the title, as amended, is clearly indicative of the invention to which the claims are directed.

The Office Action states that Claims 19, 21-26, 29, and 33 are rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter; that Claims 1, 6, 10, 15, 19, and 31-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,400,719 (*Chimura et al.*) in view of U.S. Patent Application Publication No. 2004/0139209 (*Mussman et al.*); that Claims 3, 7, 9, 12, 16, 18, 21, 24, 25, and 27-30 are rejected under § 103(a) as being unpatentable over *Chimura et al.* and *Mussman et al.* in view of U.S. Patent No. 5,940,598 (*Strauss et al.*); that Claims 4, 5, 13, 14, 22, and 23 are rejected under § 103(a) as being unpatentable over *Chimura et al.*, *Mussman et al.*, and *Strauss et al.*, in view of U.S. Patent Application Publication No. 2002/0095516 (*Nada et al.*); and that Claims 8, 17, and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Chimura et al.*, *Mussman et al.*, and

*Strauss et al.*, and in further view of U.S. Patent No. 7,076,554 (*Kobayashi et al.*). Cancellation of Claims 1, 3-10, 12-19 and 21-33 renders their rejections moot. For at least the following reasons, Applicant submits that independent Claims 34, 37, and 40, together with the claims dependent therefrom, are patentably distinct from the cited prior art.

The aspect of the present invention set forth in Claim 34 is directed to a communication apparatus including a facsimile communication unit adapted to perform facsimile communication on a line switching network and an Internet Protocol (IP) communication unit, transmit communication data to a communication partner station discriminated by a telephone number, and receive communication data from the communication partner station. The apparatus includes: an IP address obtaining unit adapted to obtain an IP address of the communication partner station from a Session Initiation Protocol (SIP) proxy server, based on the telephone number of the communication partner station; and a control unit adapted to establish a Voice over IP (VoIP) communication channel on an IP network according to the IP address of the communication partner station obtained by the IP address obtaining unit, and to transmit an image transmission request message prior to transmission of image data. Based on an image transmission permission message received from the communication partner station, in response to the image transmission request message, the control unit starts transmission/reception of the image data between the communication apparatus and the communication partner station on the IP network based on a predetermined file transmission/reception protocol using the obtained IP address of the communication partner station. In a case where transmission/reception of the communication data on the IP network based on the predetermined file transmission/reception protocol cannot be performed, the control unit causes the facsimile communication unit to start

transmission/reception of the image data using analog facsimile communication via the VoIP communication channel.

Notable features of Claim 34 are that the control unit of the communication apparatus causes the facsimile communication unit to start transmission/reception of the image data using analog facsimile communication via the VoIP communication channel, in a case where transmission/reception of the communication data on the IP network based on the predetermined file transmission/reception protocol cannot be performed. By virtue of these features, the communication apparatus is enabled to select, without input from an operator, whether communication data is to be transmitted via a SIP communication or via an analog facsimile communication for example.<sup>1</sup>

*Chimura et al.* relates to a method for a communication system allowing a plurality of telephone terminals to communicate via the Internet. As best understood by Applicant, *Chimura et al.* fails to teach or suggest data communication via an analog facsimile communication altogether, much less that data is communicated via an analog facsimile communication, if the data cannot be communicated using a predetermined transmission/reception protocol.

*Mussman et al.* relates to a method for routing calls through a network. Apparently, *Mussman et al.* teaches that, a technology prefix (e.g., a technology prefix of “15#” could indicate a fax transmission) may be used to select a gateway. As best understood by Applicant, *Mussman et al.* fails to teach or suggest that data is communicated via an analog

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<sup>1</sup>/ The example(s) presented herein are intended for illustrative purposes only. Any details presented in the illustrative example(s) should not be construed to limit the scope of the claims.

facsimile communication, if the data cannot be communicated using a predetermined transmission/reception protocol.

Applicant submits that a combination of *Chimura et al.* and *Mussman et al.*, assuming such combination would even be permissible, would fail to teach or suggest a communication apparatus including a facsimile communication unit, an IP address obtaining unit, a “control unit adapted to establish a Voice over IP (VoIP) communication channel on an IP network according to the IP address of the communication partner station obtained by the IP address obtaining unit, and to transmit an image transmission request message prior to transmission of image data, wherein, based on an image transmission permission message received from the communication partner station, in response to the image transmission request message, in a case where transmission of communication data on the IP network based on a predetermined file transmission protocol can be performed, the control unit starts transmission of the image data between the communication apparatus and the communication partner station on the IP network based on the predetermined file transmission protocol using the obtained IP address of the communication partner station, and, in a case where transmission of the communication data on the IP network based on the predetermined file transmission protocol cannot be performed, the control unit causes the facsimile communication unit to start transmission of the image data using analog facsimile communication via the VoIP communication channel, and wherein, based on the image transmission permission message received from the communication partner station, in response to the image transmission request message, in a case where reception of the communication data on the IP network based on a predetermined file reception protocol can be performed, the control unit starts reception of the image data between the communication

apparatus and the communication partner station on the IP network based on the predetermined file reception protocol using the obtained IP address of the communication partner station, and, in a case where reception of the communication data on the IP network based on the predetermined file reception protocol cannot be performed, the control unit causes the facsimile communication unit to start reception of the image data using analog facsimile communication via the VoIP communication channel,” as recited in Claim 34.

Accordingly, Applicant submits that Claim 34 is patentable over *Chimura et al.* and *Mussman et al.* Moreover, nothing has been found in *Strauss et al.*, *Nada et al.*, and *Kobayashi et al.* that is believed to cure the deficiencies of *Chimura et al.* and *Mussman et al.* discussed above.

Independent Claims 37 and 40 include features similar to those of Claim 34, in which data is communicated via analog facsimile communication, if the data cannot be communicated on an IP network via a predetermined transmission/reception protocol. Therefore, those claims also are believed to be patentable for at least the reasons discussed above. The other claims in the present application depend from one or another of Claims 34, 37, and 40 and therefore are submitted to be patentable for at least the same reasons. Because each dependent claim also is deemed to define an additional aspect of the invention, individual consideration of the patentability of each claim on its own merits is respectfully requested.

### CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and an early passage to issue of the present application

Applicant's undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,

/Lock See Yu-Jahnes/  
Lock See Yu-Jahnes  
Attorney for Applicant  
Registration No.: 38,667

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200